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Response to a Call for Public Input by the Board of Directors of the Advocacy & Resources Corporation

Good Governance Practices

The Advocacy & Resources Corporation is chartered in the State of Tennessee in accordance with regulations promulgated under TCA 48-51-101 and the Internal Revenue Service Code. The agency is a 501C3 educational corporation chartered for the purpose of assisting persons with disabilities to find employment and training, housing, and improved educational opportunities in the fourteen rural counties of the Upper Cumberland region of middle Tennessee.

The organization is not the recipient of public funds and does not solicit donations from the public. It is not sponsored by a faith-based organization. The social mission of this organization is accomplished through a non-membership, non-fundraising 'affirmative business model' while operating through revenues earned through the operation of its' food manufacturing business. Revenue generated by this not for profit business, less expenses, and termed 'net return to company' is returned to our community in the broad form of assistance to an average of 650 individuals and families annually (who are not charged), and the establishment of new programs of service consistent with our stated mission throughout our rural region. In the previous five year period, we have established an in-house health clinic, a drug court program, a mentoring program for at risk youth with disabilities, a homeownership program, a construction company, and a USDA-certified analytical laboratory.

The structure of this organization is supported by 13 specialized operations areas, 230 employees, and a JWOD agency and project ratio that continuously hovers between 75 - 89%. The manufacturing arm of the agency produces 125 part numbers, of which 18 are on the Procurement List and constitute about 55% of our total revenue. Revenues have grown from nothing in 1986 to $68 million in 2005. We are one of a group of food manufacturers designated to supply the government with supplies under unique surge and emergency conditions, which has had an obvious and direct impact on our work in the last three years. End users in 40 states and 60 foreign countries are supported by our specialized and commercial products. We are inspected by 8 Federal and State food safety organizations whether we produce 1 or 1,000,000 units. Eighty-two (82%) of our expenses are expended on manufacturing supplies and indirect supports. Since 2001, the cost of wages and salaries as a feature of product cost has reduced from 17% of total cost to 14% in 2006 (See Table 2).

Table 1. Agency Growth, Calendar Years 2001-2005

Fiscal Year 7/1-6/30	2001	2002	2003	2004	2005
Agency Factoids (5 Yrs)					
Revenue	$ 26,771,878.00	$ 44,305,735.00	$ 56,977,112.00	$ 63,617,153.00	$ 68,315,527.00
Expenses	$ 26,088,846.00	$ 42,418,381.00	$ 50,617,748.00	$ 62,210,782.00	$ 67,224,551.00
Employees	81	97	136	192	223
Contract Labor FTEs	26	41	35	49	52
JWOD Ratio	75.87%	81.43%	84.13%	81.07%	89.47%
Total Agency Ratio	75.24%	82.21%	84.63%	81.68%	89.69%

The ARC has a seven member board of directors (BOD), which is comprised of individuals who are personally committed to the mission of the organization and who possess the specific skills needed to accomplish the organization's mission. Board members reflect a cross section of the community, including consumer representation and business leaders. Four independent members of the BOD serve as financial experts. Three employees serve as 'ex officio' members of the BOD. Agency bylaws developed in accordance with the State of Tennessee Code through implementation of the **Revised Model Nonprofit Corporation Act (American Bar Association),** define the responsibilities of members. In accordance with our bylaws and charter, the Chairperson of the BOD is also the CEO. Our bylaws set forth two year term limits for board members. Board members work without compensation but are directly reimbursed for expenses directly related to their board service. This reimbursement is reported to the IRS through the issuing of 1099s.

The independent members of the board hires the CEO and COO, sets their compensation and evaluates performance annually. These activities are captured through employment contracts which specifically state the conditions of employment and requirements for continued employment. The Agency's entire compensation schedule is determined through a compensation study conducted every three years and is approved by the board. For executive staff, an independent review of compensation and benefits matters is conducted by an external consultant contracted by the full board. This consulting firm evaluates the work to be performed, the industry in which the executives are working, the bodies of knowledge and experience required to execute requirements, and overall agency performance. The agency has a written conflict of interest policy for all employees and board members. Executive staff conducts a compensation for management and direct labor personnel each three years, renorming wage schedules and benefits against published indexes for the DOT code to which personnel are assigned. All staff and board members must identify in writing any conduct or transactions that are likely to raise conflict of interest concerns. These are reviewed by the board of directors and are retained on file. Compensation is reported to to the IRS on Fm 990 for the agency's highly compensated employees (those who earn more than $90,000 per year in the current or previous year and/or who are in the top 20% of compensated employees for the current or previous year).

The agency maintains an exhaustive internal audit program to review statutory, regulatory and financial reporting requirements and provides summaries of these reviews to the board of directors and the management team. Financial audits are conducted biannually by an independent audit firm and two banks with whom we conduct the largest part of our business activities. The full board reviews and approves the findings of the organization's annual audit and management letter and approves any plans to implement recommendations contained in the management letter. Transactions that may reflect on staff/board conflicts of financial interest are reported in the notes of the agency's annual audit. Quality and customer audits are conducted annually. Each year, the agency prepares, and makes available annually to the public, information about the organization's mission, program of activities, and basic audited financial and customer satisfaction data. The report also identifies the names of the organization's board of directors and executive management staff, along with summarized data regarding programs and services provided to the community by the organization.

In sum, we strongly believe that the need for good governance is paramount to the sound operation of the not for profit business model. We have taken the necessary steps to insure that this agency operates not only within the ' letter of,' but the 'spirit' of existing state and federal regulations and statutes. We have implemented strong internal and external audits and safeguards to insure that we remain at an operational status that is consistent with our mission, our governmental and commercial customer requirements and our stated commitment to the public. We have also built a strong expectation within this organization that perfection is not expected, that continuous improvement is required, that teamwork will result in our meeting of this agency's goals and objectives for quality and customer satisfaction.

The definition of additional 'good governance' practices has yet to be defined by the Committee, so evaluating additional good governance practices is at this time, in the eye of the speculator. The biggest arbiter of of the effectiveness of the good governance practices and fair market price as they relate to prices established by the JWOD program is whether the customer and end-user are 'satisfied' by their experience. To ask our customer to define executive compensation as a factor in achieving that satisfaction is like asking the Victoria's Secret customer to offer a measurable statement about her delight at the method by which the employees who made her silk underwear were compensated. As long as it wasn't made by child labor in a sweatshop in India, the purchaser is not likely to care, because it's not an evaluation factor for her purchase selection.

We do not believe that the interests of the Committee for Purchase will be furthered by usurping the roles of those state and federal agents charged with the oversight of not for profit corporations registered to do business in their home territories. **Certification to good governance practices could be easily accomplished annually and through periodic audits by the CNAs.**

Fair Market Price & Executive Compensation

Each state has statutes that are designed to implement the regulatory requirements of the IRS code. The federal government and the Secretaries of various States are responsible for monitoring of the requirements and have provisions for same through their offices of corporations. There are many different NFP models, many of which have great potential to offer significant value to the JWOD program. Each of these models have different structures, missions, and community focused strategies. Each model has different management requirements. The world of NFPs is not a 'one size fits all' program and many of these models have great value to offer to the execution of the JWOD mission. The concepts of 'Duty of Care' and due diligence by a BOD to establish compensation for the most highly compensated employees on their staffs, speak to the need to ensure continued stability of the business strategy adopted for the organizational model and the expectation for work to be performed by executive personnel. Whether highly compensated employees earn $20,000 or $2,000,000 annually, wage discrimination tests force NFPs to develop strategies for paying and planning for the provision of benefits to the most highly compensated employees.

Fair Market price (FMP) is the price which has been determined to be fair and reasonable for the product or service in question. The basis for FMP is established by a review of the customer requirements, quantities or volumes of service, domestic commercial market conditions, and requirements for the delivery and execution of the service or product. Executive compensation is unlikely to have any significant influence on assessed prices that have been determined by the customer to be fair and reasonable, especially as price has historically been constructed in the JWOD program. Further, OMB Circular A122 clearly provides guidance for costing and pricing for not for profit corporations and educational institutions, and defines methods for determining allowable costs.

The ARC, d.b.a Arc Diversified, has a multiple year history of established Fair Market Price for food products. Prices have been remarkably stable as organizational complexity has grown in relationship to changing customer requirements, efficiencies have been gained, and commodity markets have risen and fallen. As our revenues have grown, we have been able to offer every employee the following benefits: agency paid individual major medical health insurance, with vision and dental benefits and a $50,000 life insurance policy; participation in a 401(k) plan; access to in-house health clinic services; GED instruction; tuition reimbursement; FICA match; Medicare Tax match; State of Tennessee Unemployment Compensation Insurance; Workman's Compensation Insurance; Personal Time Off (Sick leave/Holiday); access to reasonably priced supplemental Cancer, Medicare and long-term care insurance; longevity pay; and performance bonuses. In 2003 and 2004 we rectified the negative impact of payroll discrimination tests on executive staff over a 17 year period by establishing funds for a retirement program for highly compensated employees. These were reported on IRS Fm 990 as a combination of wages and benefits for those years. Employees chose to be taxed for same.

Table 2. Overall Compensation as a Percent of Agency Revenue

Fiscal Year 7/1-6/30	**2001**	**2002**	**2003**	**2004**	**2005**
Compensation Factoids (5 Yrs)					
CEO Salary	$ 58,122.00	$ 117,900.59	$ 287,878.23	$ 336,221.51	$ 215,009.59
CEO Bfts Medicaid/SSA/WC/PTO/Longevity/Ins	$ 42,677.16	$ 54,451.05	$ 296,851.99	$ 401,073.60	$ 175,284.88
COO Salary	$ 46,791.80	$ 74,164.76	$ 327,284.60	$ 322,123.59	$ 216,045.73
COO Bfts Medicaid/SSA/WC/PTO/Longevity/Ins	$ 30,905.68	$ 36,687.26	$ 296,851.99	$ 385,805.07	$ 208,458.07
Management Team Salaries	$ 512,579.46	$ 567,184.13	$ 792,648.00	$ 706,158.32	$ 630,058.04
MGMT Team Bfts Medicaid/SSA/WC/PTO/Lgvty	$ 178,028.49	$ 177,291.31	$ 410,979.60	$ 680,956.31	$ 439,447.18
Direct labor Base Wages	$ 1,366,266.63	$ 1,458,317.82	$ 1,966,321.03	$ 2,613,300.82	$ 2,823,877.42
Direct labor Benefits	$ 310,558.03	$ 293,164.81	$ 410,979.60	$ 533,103.99	$ 439,772.45
Contract/Temporary labor Base Wages	$ 721,391.01	$ 759,609.00	$ 694,285.00	$ 1,059,389.00	$ 1,193,945.00
Contract/Temporary labor Benefits (<90days)	$ -	$ -	$ -	$ -	$ -
Indirect labor Base Wages	$ 721,391.01	$ 874,099.19	$ 1,148,747.40	$ 1,517,803.43	$ 1,737,165.76
Indirect Labor Benefits	$ 171,212.36	$ 181,702.06	$ 251,686.56	$ 385,843.27	$ 439,772.45
Health Insurance (All employees)	$ 290,013.81	$ 421,911.23	$ 586,249.71	$ 1,124,422.22	$ 916,318.07
Total Agency Compensation & Benefits	**$ 4,449,937.44**	**$ 5,016,483.21**	**$ 7,470,763.71**	**$ 10,066,201.13**	**$ 9,435,154.64**
Compensation & Benefits as a % of Revenue	17%	11%	13%	16%	14%

Table 3. Historical JWOD Fair Market Price (See also Table 2.)

Wages as an Evaluation Factor for JWOD Fair Market Price History							
	2001	**2002**	**2003**	**2004**	**2005**	**Proj 2006**	**% Increase/ (Decrease) from Initial Base**
Gingerbread 5# Bag	$21.11	$18.64	$20.77	$21.18	$21.27	$22.33	4.98%
Gingerbread 50# Bag					$33.81	$28.94	-14.40%
Gingerbread #10 Can	$24.80	$22.23	$23.64	$21.60	$21.71	$24.10	11.01%
Devil's Food 5# Bag	$23.13	$26.06	$29.59	$25.44	$25.67	$26.95	4.99%
Devil's Food 50# Bag					$44.28	$36.63	-17.28%
Devil's Food #10 Can	$26.12	$31.43	$26.16	$28.14	$26.98	$29.95	11.01%
Pancake Reg 5# Bag	$20.49	$16.09	$17.33	$21.18	$22.84	$23.98	4.99%
Pancake Reg 6# Bag					$25.94	$27.24	5.01%
Pancake Reg 25# Bag					$18.89	$19.83	4.98%
Pancake Reg 50# Bag					$37.13	$31.69	-14.65%
Pancake Reg #10 Can	$21.88	$19.66	$20.65	$17.52	$19.55	$21.70	11.00%
Pancake Buttermilk 5# Bag	$21.13	$16.67	$18.63	$22.77	$22.84	$23.98	4.99%
Pancake Buttermilk 6# Bag					$25.94	$27.24	5.01%
Pancake Buttermilk 25# Bag					$18.89	$19.83	4.98%
Pancake Buttermilk 50# Bag					$37.13	$31.69	-14.65%
Pancake Buttermilk #10 Can					$19.55	$21.70	11.00%
Bakery Mix Reg	$17.78	$14.31	$15.49	$15.82	$16.26	$16.26	-8.55%
Bakery Mix LF	$19.00	$18.34	$18.17	$18.90	$18.58	$18.58	-2.21%
Veg Oil 4L	$17.33	$21.86	$25.40	$21.96	$21.80	$21.80	25.79%
Veg Oil 20L	$12.91	$17.11	$19.86	$20.22	$18.57	$18.57	43.84%
Total Units Produced	1,384,014	2,457,710	2,862,689	3,215,391	2,698,772	2,003,000	
					The above includes 695,679 units for INFDM for which the program has ended		

To place the evaluation of executive compensation at the top of analyzing cost or price begs the real questions of determining the cost of producing against customer requirements and assigning value for the work to be performed. The establishment of artificial caps on the factor of executive compensation has no precedent either in regulation or in the commercial world. There are however, precedents for analyzing costing and pricing in relationship to market and regional conditions and that is where Boards of Directors should place the task of determining compensation factors.

As importantly, the stifling and impairment of a NFP's ability to grow and change with market conditions or customer requirements by under pricing any elements of cost, should cause as much concern for those who are evaluating market conditions and their impact on pricing. The CPBOSH should be equally as concerned about compensation and pricing that are offered at less than the rates found in the marketplace and which if promulgated, may result in the CRP's inability to manage and maintain the resources necessary to support the work, recruit and retain qualified individuals, and thereby impair their ability to adequately meet customer requirements. The only evaluation factor for wages should be the value placed on the work to be performed by the marketplace, and the skills and abilities of the individuals tasked to perform the work. To attempt to determine a relationship between the value placed on executive compensation and the value placed on a worker with or without severe disabilities who is placed into a line position is absurd. Organizational complexities are too variable to draw any meaningful conclusions.

The ARC believes that the establishment of compensation benchmarks or thresholds are discriminatory and as a strategy, does not reflect industry requirements for the recruitment, compensation and retention of qualified employees at any level. Nor does it address the wide range of capabilities or limitations of JWOD employees, and the various models adopted to ensure access to participation. Evidence of consideration of compensation issues could be provided to the CNA as part of due diligence. But the details belong to the individual employee, the BOD and the IRS, the Department of Labor, and not to the Committee for Purchase.

We do not believe it is appropriate to single out executive compensation packages under any conditions. NFPs already report to their respective states and the IRS and employees report via individual tax returns. States, through their divisions of Municipal and State audit or the equivalent, have protocols for reporting compiled financial information. Private NFPs are NOT state or federal agencies and do not have the burden of the public disclosure of personal information. It is inappropriate to single out a class of employees when asking for information about compensation and benefits. Should the Committee feel compelled to defend ALL wages as a factor of conducting the business of JWOD, it might be appropriate to ask for information about total agency wages on the Fm 404. Value judgements about such information are best left to Boards of Directors.

To summarize, the REAL questions should be: What are the essential personnel functions that must be addressed to execute products and services for government customers within the industry and product or services that is being evaluated? What is the relationship of the total pool of overhead and burden, direct labor wages and supplies or manufacturing materials to product cost, distribution quantities and customer requirements? Given these factors, what is the relationship of FMP to comparable domestic industries and volumes for the region of the country in which the work is performed? And finally, within the resources allocated to the NFP through the conduct of its' business and through the vehicle of price, can it continue to allocate its' resources to the practice of good governance and more importantly, will it be in the business of providing jobs and job training to persons with severe disabilities tomorrow, next year, or in five years?

References

Internal Revenue Code
TCA 48-51-101
48 CFR
OMB Circular A122
Guidebook for Directors of Nonprofit Corporations, Second Edition
2002 Guidestar Nonprofit Compensation Report (990 &990-EZ)
Chronicle of Philanthropy
Salary Expert.com
Lloyd Pitts, CPA, Columbia, South Carolina–Paul Streckfus EO Tax Journal. Sept/Oct 2003
Compensation history of key personnel
The Law of Tax-Exempt Organizations, Eighth Edition, Bruce R. Hopkins
Tennessee Department of Labor published indexes by job title
Tennessee Chamber of Commerce Annual Wage Survey

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